



WORKING AFTER RETIREMENT IN PUBLIC AGENCIES

Progress on pension reform has been moving slowly through the legislative process in California. There has been a lot of rhetoric, but little action. Some movement has taken place, however, and includes the following:

- Various political groups and think tanks have weighed in on the topic and that has resulted in six (6) initiatives being released to gather signatures. Four (4) of those initiatives have been dropped because they could not get signatures or funding to qualify by the February 2 deadline for the November election.
- Governor Brown and the Republican Party have developed a twelve (12) point program for pension reform. The Republicans have indicated that they want to see changes that will affect currently vested employees. The Democratic version basically focuses on changes that may not impact current retirees directly. It is apparent they are treading carefully. There is concern about:
 - Changes that will be challenged by the union members who support their causes.
 - Rights of vested members of public pension programs.
- A legislative Pension Reform Committee has been appointed and has been meeting but, to date, no action or report has been produced. Governor Brown has submitted legislative language to the committee that addresses his 12 point program.
- ACCCA has developed a legislative position on pension reform and has appointed a sub-committee to Commission on Finance and Legislation (CFLA) to monitor and take action on the pension issues. ACCCA has:
 - Developed a matrix on pension reform that is on the web page.
 - Held two (2) presentations on pension reform; (1) at the budget workshop; and (2) at a town hall meeting to be held at the ACCCA convention.
 - School Services of California (the lobby firm) tracking pension reform issues for ACCCA and SSA is standing ready to address needed legislation.

While it can be said that attention is being given to the pension reform issues, there are now some alarming actions taking place, due to the absence of aggressive pension reform activities. There are two major concerns that need to be addressed very soon.

CalSTRS Exemptions will Sunset on June 30 2012

If you are a retiree, you have received a newsletter and email informing you that all the exemptions that have been available to retirees will expire on June 30,2012, that the earnings limit for the 2011-12 fiscal year is \$31,020, and retirees are responsible for monitoring their earnings. What is alarming is the language in the letter.

Earnings Limit

If you return to work in a CalSTRS-covered position, there is a limit to the amount you can earn in a fiscal year without affecting your CalSTRS benefit. Your CalSTRS benefit will be reduced dollar for dollar by the amount of creditable earnings from public school employment in excess of the earnings limit.

If you are under age 60 and do not have a separation from service, you will be subject to the earnings limit as well as the separation of service requirement. The Teachers' Retirement Board adjusts the earnings limit annually. The earnings limit for the 2010-11 fiscal year is \$31,020.

Exemptions from the Earnings Limit (The current guide states)

You may qualify for an earnings limit exemption under certain circumstances. Contact your employer if you believe you qualify. If you are under age 60, however, there are no exemptions from the separation from service requirement. In most cases, your employer must submit documentation to substantiate your eligibility for an exemption by June 30 of the applicable fiscal year. It is up to you to contact your employer to verify that the required documentation has been submitted. CalSTRS has the final authority to approve an exemption request. Keep in mind you are subject to the earnings limit unless CalSTRS approves your exemption.

The following post-retirement earnings are exempt from the earnings limit, subject to CalSTRS approval:

- If you do not perform CalSTRS-covered employment for at least 12 consecutive months after your most recent retirement, you are automatically exempt from the earnings limit (this exemption does not require employer documentation).
- If you retired on or before January 1, 2009, and return to any of the following:
 - Provide direct instruction in a K-12 classroom.
 - Provide direct remedial education in a classroom for grades 2 through 12.
 - Support or assess new teachers in the Beginning Teacher Support and Assessment Program.
 - Provide support to individuals completing student teaching assignments in alternate certification programs or in the School Paraprofessional Teacher Training Program.
 - Provide pupil services and instruction in Special Education or instruction in English Language Learner programs.
 - If you return to work as a trustee or administrator for a financially insolvent employer, or under the Immediate Intervention/Underperforming Schools Program or the High Priority Schools Grant Program (this exemption is limited to a 24-month term).
- If you return to work in certain emergency situations in an administrative position requiring highly specialized skills, as long as your termination did not create the vacancy (this exemption may not exceed one-half of the full-time position and is limited to a 24-month term).

These exemptions are available through June 30, 2012, unless extended by law. What is disturbing is that the language in the announcement stated:

“The following limits apply whether you perform creditable service as an employee of the public school system, an independent contractor or an employee of a third party.”

This constitutes a significant change in the language that is not discussed in the article extracted above. It is important to note that the CalPERS system also has limits on working in a creditable position as an independent contractor, consultant, or third party contractor. I would hope that this is what is being alluded to above, but clarification is certainly needed. If this is the case, it would significantly affect those who are working under the current exemptions and those companies that provide services in placing these individuals.

It is time to start an aggressive campaign to extend these exemptions beyond June 30, 2012. There are several reasons for a continued need for this type of expertise that is best provided by those in the retiree pool:

- The fiscal crisis in California is contributing to an increase in the retirement of executive management in the community colleges. Both search firms and temporary employment are needed to provide for the transition of leadership for these colleges.
- There is an increase of community colleges that are on sanction with the Accreditation Commission of Community and Junior Colleges (15 colleges were placed on sanction at the last meeting in January) and there is a need to provide consultation expertise to these schools.
- A number of community colleges are also having significant fiscal crises that call for experienced business officers to assist in resolving the fiscal problems.
- Small colleges in rural communities need the ability to call on retirees as part-time teachers if these colleges are going to have the capability to provide instruction in comprehensive community college disciplines in their local communities.

These examples are not extensive or even close to relating to the issues of double dipping currently spread in the media. However, not providing these services will create a hardship, not only for the districts, but more importantly for the quality of education that will be available to community college students. We need to address this issue now.

Independent Contractor Legal Changes

Last January 1, SB 459 became law, placing new limits on the use of Independent Contractors as a means of providing for employment coverage for most employers. This has been a growing practice in private industry where they have used contract services to get away from having to provide fringe benefits.

Governmental agencies have become concerned because individuals providing “independent contractor” services are less likely to meet their tax obligations, thus impacting governmental agency tax revenue. We could all argue about the efficacies of government resolving their revenue problem in this way, but it is now law.

One of the impacts of the legislation is that employers and independent contractors in violation of the law can be fined up to \$15,000 each. The IRS is offering an amnesty program to those that clear up this practice.

Independent contracting is regulated by the Internal Revenue Service (IRS) and basically calls for the ability of the independent contractor to set prices and control working conditions of the employment. Unfortunately, there are a lot of examples in public education that cross the line with regard to these criteria. Now, we will have to be concerned as vendors that we are not placing retirees into these settings and making them subject to fines. We need to explore this legislation more and understand the challenges that it presents.

We have a lot of challenges in front of us. It will be important to work together to protect the interest of our retirees and to support the districts as we move through this transition. I am calling on ACCCA and my colleagues in executive search and consulting services to work together to ensure that we have the capability to serve our public community colleges in California.

Donald F. Averill, Ed.D.
Vice President, Southern California Service
Professional Personnel leasing (PPL)